

# **RIGHT TO KNOW ADVISORY COMMITTEE**

## **LEGISLATIVE SUBCOMMITTEE MEETING**

### **DRAFT AGENDA**

November 18, 2010

11:00 a.m.

Room 437, State House

Welcome and introductions

#### **I Pending issues**

- A. Draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (examples from other states)
- B. Draft legislation: Making and maintaining records of public meetings (amendment proposed by MMA)
- C. Website disclaimer or warnings about public nature of emails
- D. Draft legislation & issues discussed: the requirement for education and training of public officials
- E. Review of feedback from entities whose current statutes allow meetings via communication technology when less than a quorum is physically present: Finance Authority of Maine, the Emergency Medical Services Board, the Ethics Commission, and the Workers' Compensation Board

#### **II Other business**

Full Advisory Committee meeting scheduled for Thursday, November 18, 2010, 1:00 p.m.
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Adjourn

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Confidential communications

**Sec. 1. 1 MRSA §402, sub-§5** is enacted to read:

**5. Public officials' communications.** A record involving communications between a person and a public official is a public record except for information contained in the record that:

- A. Is excepted from the definition of public record in subsection 3;
- B. Is designated as confidential by statute; or
- C. Would be confidential if it were in the possession of another public agency or official.

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## Legislator/Elected Official E-mail

### Colorado

24-72-202 (6)(II)

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

- (A) Work product;
- (B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;
- (C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or
- (D) Subject to nondisclosure as required in section 24-72-204 (1).

### Montana

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

### New Jersey

47:1A-1.1 Definitions

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

- information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

## Legislator/Elected Official E-mail

- any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

### Rhode Island

§38-2-2 Definitions.

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

...

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

### Delaware

Title 29, § 10002. Definitions.

(g) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored,

## Legislator/Elected Official E-mail

recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

(16) Emails received or sent by members of the Delaware General Assembly or their staff;

(19) Any communications between a member of the General Assembly and that General Assembly member's constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's constituent, or communications between members of the General Assembly.

### **Texas**

Sec. 552.109. EXCEPTION: CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER. Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021 (*availability of public information*).

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Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Record/Minutes of Public Proceedings

(Initial changes from LD 1791 indicated in *italics*; MMA changes double underscored)

**Sec. 1. 1 MRSA §403**, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

**§403. Meetings to be open to public; record of meetings**

**1. Proceedings open to public.** Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public; *and any person must be permitted to attend a public proceeding and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection.*

**2. Record of public proceedings.** Unless otherwise provided by law, *records of all public proceedings a record of each public proceeding* for which notice is required under section 406 must be made within a reasonable period of time after the *proceedings proceeding* and *must* be open to public inspection. At a minimum, *a the* record must include:

A. The date, time and place of the public proceeding;

B. The members of the body holding the public proceeding recorded as either present or absent; and

C. The general substance of all matters *proposed, discussed or* decided; and

D C. All motions and votes taken, by individual member, if there is a roll call.

**3. Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

**4. Maintenance of record.** *Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.*

**5. Validity of action.** *The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.*

**6. Advisory bodies exempt from record requirements.** *Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.*



Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Public records and proceedings training

Sec. #. 1 MRSA §412 is amended to read:

**§412. Public records and proceedings training for certain elected officials**

**1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

**1-A. Training for certain appointed officials.** Beginning July 1, 2011, an appointed county clerk or municipal clerk shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The appointed clerk shall complete the training not later than the 120th day after the date the appointed clerk takes the oath of office to assume the person's duties. For appointed clerks subject to this section serving in office on July 1, 2011, the training required by this section must be completed by November 1, 2011.

**2. Training course; minimum requirements.** The training course under subsection subsections 1 and 1-A must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

An elected official or appointed clerk meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

**3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official or appointed clerk shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training

completed and the date of completion. The elected official or appointed clerk shall keep the record or file it with the public entity to which the official was elected.

**4. Application.** This section applies to the following ~~elected~~ officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

D.

E. The following county government officials who are elected: ~~Commissioners, commissioners,~~ treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members ~~of county governments;~~

E-1. Appointed county clerks;

F. The following municipal government officials who are elected: ~~Municipal municipal~~ officers, clerks, treasurers, assessors and budget committee members ~~of municipal governments;~~

F-1. Appointed municipal clerks;

G. Elected Officials ~~officials~~ of school units and school boards; and

H. Elected Officials ~~officials~~ of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, an airport authority established pursuant to Title 6, chapter 10, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

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**Other issues previously discussed:**

- Require training for legislators every year (or session?), even those trained in prior sessions
- Require training for all appointed officials who perform the same tasks as elected officials who are required to complete training
- Require training for all supervisors who oversee the work of officials who are required to have training
- Initial training enough or repeated training at some interval?

Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Using technology to conduct public proceedings

**PART A**

**Sec. A-1. 1 MRSA § 403-A** is enacted to read:

**§403-A. Public proceedings through other means of communication**

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

**1. Requirements.** A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

**2. Voting.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

**3. Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

**4. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

## **PART B**

### Finance Authority of Maine

**Sec. B-1. 10 MRSA §971** is amended to read:

#### **§971. Actions of the members**

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

**1. Placement of call.** A conference call to the members must be placed by ordinary commercial means at an appointed time.

**2. Record of call.** The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

**3. Notice of emergency meeting.** Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

### Ethics Commission (any changes?)

**Sec. B-2. 21-A MRSA §1002** is amended to read:

#### **§1002. Meetings of commission**

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

#### Emergency Medical Services Board

**Sec. B-3. 32 MRSA §88, sub-§1, ¶D** is amended to read:

#### **§88. Emergency Medical Services' Board**

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

**1. Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.



A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

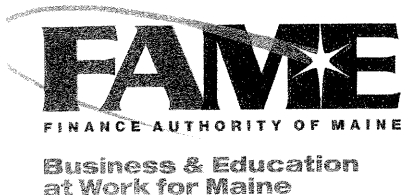
D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

## Workers' Compensation Board

**Sec. B-4. 39-A MRSA §151, sub-§5** is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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October 27, 2010

Hon. Barry Hobbins, Chair  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Chris Spruce, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee

Dear Senator Hobbins and Mr. Spruce:

Thank you for your letter dated October 12, 2010 requesting FAME's comments to the proposed draft legislation concerning use of technology to conduct public proceedings. We appreciate the opportunity to respond to the proposed change to our existing statute, which is set forth at 10 M.R.S.A. § 971.

As you noted in your letter, statutory language regarding FAME has been in place regarding this matter for some time now, and use of technology to conduct public proceedings has been used by it rarely, but well. We do have some concerns regarding the proposed changes, however, and wish to offer some suggestions for improvement:

First, as a general matter, the proposed changes appear to allow all agencies that currently are not allowed to use technology in the conduct of public proceedings to now do so (even in cases of non-emergency), but, ironically, would no longer allow FAME this possibility *except in case of emergencies* that meet all of the newly proposed requirements. If one examines the proposed change to FAME's statute, 10 M.R.S.A. § 971 (the shaded box on the sheet you provided), our emergency meetings now must meet all the requirements in proposed 1 M.R.S.A. § 403-A, as well as FAME's current statutory requirements. For obvious reasons, we prefer to maintain our current ability to conduct emergency proceedings electronically in limited circumstances, which constitute an emergency in the realm in which we operate. These include having to make a credit decision on less than three days' notice based on the exigencies of a situation, and may include having to conduct a meeting that was regularly scheduled, but is now impossible for members to attend because of poor weather, so that the businesses awaiting financing may receive a timely decision. Additionally, if other public entities will have the ability to use electronic communications for non-emergency matters, we would like to have that same capacity. More specific concerns follow:

- In proposed 1 M.R.S.A. § 403-A(1)(C), a quorum of the body would now be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. Although ideal, this new


- requirement is problematic for FAME in cases of emergency when telephonic participation of members is necessary and quorums are only achievable by counting telephonic participants. We have found this option useful when dealing with business assistance emergencies in the past, and have only used this approximately three times in the past five years. We urge the committee to consider removing this requirement for emergency situations.
- Subsections (1)(H) and (2)(A) create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although FAME always attempts to furnish all materials in advance to board members, sometimes last-minute business request materials are provided that are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.
- Subsection (1)(I) would forbid remote member participation in the case of a public hearing. FAME requests that an exception be made for the common case of *pro forma* public hearings in the rulemaking process. The Administrative Procedures Act requires that one-third of board members be present. FAME prefers to have greater member participation and not inconvenience our members with additional meetings, so we typically conduct our rulemaking hearings on monthly, regular board meeting days (a quorum of seven required here, but remote participation, although rare, counts toward a quorum). To do otherwise would require a minimum of five (of our fifteen) board members (who are busy and live in all parts of the state) to gather physically more frequently for just this purpose. This is impractical and logistically challenging. Besides, written comments for public hearings are already allowed under the law.
- Subsection (3)(A) seemingly limits emergency meetings to cases largely inapplicable to FAME (a Governor-declared emergency or health emergency). What about FAME-related emergencies like potential business closings or payroll issues on a Friday evening? Currently, under 10 M.R.S.A. § 971, FAME is able to conduct emergency meetings provided three days' notice is given. The exceptions here should be broadened to allow for our current statute and other statutory cites, or these requirements should be deleted. We can easily satisfy Subsections (3)(B) and (C), however.

In sum, FAME prefers to keep its current statute on the books, unamended. We are happy and able, however, to comply with the bulk of the proposed changes to Title 1, if necessary, but urge you to consider the needs and practicalities of our members and our

mission. In rare but important cases, FAME members need to meet at a moment's notice to save a business or respond to a financial emergency. Requiring our members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. We are glad to assist in any way possible.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bill Norbert", with a stylized flourish at the end.

William S. Norbert  
Governmental Affairs and  
Communications Manager



**HylanBarr, Marion**

**From:** Bradshaw, Jay  
**Sent:** Thursday, October 21, 2010 10:27 AM  
**To:** HylanBarr, Marion; Reinsch, Margaret  
**Cc:** Jordan, Anne H  
**Subject:** Right to Know Committee proposed statutory changes

Marion & Peggy,

Thanks for sending the proposed changes to my attention.

I offer for your consideration the following comments:

§403-A

1.C – as part of our ongoing budget curtailments, the Board of EMS only meets every other month. However, there may be times when this extended meeting interval would have a negative effect on our operation. At these times, we may need to conduct a very brief meeting (some have lasted < 30 minutes) and rather than having folks literally travel from all over the state, we set up a conference room with a speaker phone and the majority of members participate using that option. The room is the posted meeting location and is open to the public. MEMS staff, the AG's office, and local Board members attend in person. This proposed change would prevent us from conducting business using this technology and have a negative effect on either our business work flow or the budget (if we went back to more frequent in person meetings). From a budget standpoint, an in person meeting costs us > \$1,000 because of the travel reimbursements (we have 2 members from Aroostook County who come down the night before the meeting). A conference call meeting usually costs us < \$100.

1.D – not sure what is meant by "reasonably practical" or why that would need to be stated. Both the current and prior Administrations have consistently promoted using technology to reduce expenses and expand participation. This seems to be an unclear restriction and a step backwards.

1.G – is it necessary to take a roll call vote if the outcome is unanimous?

1.I – our statute (32 § 88.2.B) requires that we conduct public hearings in each region affected by the change (which in effect means in each of 6 regions) and was amended many years ago to include that we "...may use available technology." We have always met the other staffing requirements at one or more sites, but enabling Board members and the public to attend via videoconference has greatly expanded the ability for input to proposed changes.

The other proposed changes do not seem like they would have an untoward effect on us.

Thanks for the opportunity to comment – and please let me know if you would like additional information.

Regards,  
Jay

Jay Bradshaw, Director  
Maine Emergency Medical Services  
Department of Public Safety  
45 Commerce Dr., Suite 1  
152 State House Station  
Augusta, ME 04333  
(207) 626-3860  
(207) 287-6251 (fax)  
[www.maine.gov/dps/ems](http://www.maine.gov/dps/ems)

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STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**By E-Mail and Inter-Office Mail**

To: Legislative Subcommittee of the Right to Know Advisory Committee

From: Jonathan Wayne, Executive Director

Cc: Danielle Fox, Analyst, Joint Standing Committee on Legal and Veterans' Affairs

Date: November 17, 2010

Re: Comments on Proposal Concerning Telephone Meetings

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Thank you for the opportunity to comment on the proposal concerning public meetings facilitated with telephone or other electronic participation. During the last 28 days before an election, the Maine Commission on Governmental Ethics and Election Practices is *required to meet within one calendar day* of the filing of any complaint or question with the Commission (21-A M.R.S.A. § 1002(1)). This requirement, itself, poses challenges for the Commission. During this period, the Commission is authorized by § 1002(2) to meet by telephone. In practice, most members prefer to travel to Augusta to meet in person. Once in a while, however, a Commissioner must participate by telephone and is in a location that does not have a high speed internet connection.

Only one element in the subcommittee's proposal would present a practical problem for the Ethics Commission. I view it as a surmountable problem in our case, but I wanted to bring it to your attention because it could affect other agencies or municipal boards. In our case, most matters are considered by the Commissioners and decided within a single meeting. The Commission has an open policy of accepting written materials during the course of a meeting. Sometimes members of the public arrive at the meeting intending to comment and bring written materials with them. Some of them are concise and germane, but some of them are not.

Under proposed 1 M.R.S.A. § 403-A(2)(A), a member who was participating electronically could vote on an issue only if the member has received *all* of the additional materials presented to the members in person. To meet this requirement, an employee of the Commission would have to be on call to ensure that every handout provided by every member of the public could be immediately converted to a pdf and be e-mailed to the Commissioner who is participating by phone. Unfortunately, the part of the state's e-mail system that we use sometimes blocks the transmission of large attachments. The diverse public bodies in Maine subject to the open meetings law may have other technological obstacles to transmitting last-minute written materials to members who are

participating remotely. Therefore, I wonder if the authority of the member to vote when last-minute materials are presented to the body should be left to the discretion of the board or to the individual member, rather than a blanket prohibition that applies to all public bodies statewide.

That said, I do not see the need for the Ethics Commission to receive any exception to the general requirements. In my view, we can work around whatever the Legislature enacts.

If the subcommittee's proposal is considered in the 2011 legislative session, I would suggest deleting 21-A M.R.S.A. § 1002(2) within the subcommittee's proposal.

Thank you for taking the time to seek input from the Ethics Commission.